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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,214	03/15/2001	Erwin Hacker	514413-3869	6462

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EXAMINER	
CLARDY, S	

ART UNIT	PAPER NUMBER
1616	9

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/787,214	Applicant(s) Hacker et al
	Examiner S. Mark Clardy	Art Unit 1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Mar 25, 2003* .

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-9 and 11* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1, 2, and 5-9* is/are rejected.

7) ☒ Claim(s) *3, 4, and 11* is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

Claims 1-9 and 11 are pending in this application which has been filed under 35 USC 371 as a national stage application of PCT/EP99/06937, filed September 20, 1999. This application lacks unity of invention under 37 CFR 1.475 (MPEP 1850, 1893.03(d)).

Applicants' claims are drawn to herbicidal compositions comprising:

A. An aminotriazinyl herbicide

B. A second herbicidal component (see seven page list in claim 1).

In the response filed July 25, 2002, applicants elected the composition comprising the following herbicides:

A2. N-(1-cyclopropyl-4-phenylbutyl)-6-(1-fluoro-1-methylethyl)-1,3,5-triazine-2,4-diamine

B1.3.3 Fenoxaprop.

Claims 3, 4, and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. These claims are drawn to the elected species, and are also commensurate in scope with other species for which data has been presented, i.e., the "A" group herbicides of formula X, in combination with sulfonylurea herbicides. See examples 1-22.

The abstract has been corrected.

The rejections under 35 U.S.C. 112, second paragraph, are withdrawn in response to applicants' comments and amendments.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Giencke et al (US 6,239,071), Hoechst (PCT WO 98/34925), Hirata et al (A: EP 0 467 204; B: EP 0 469 406; C: EP 0 471 221; D: EP 0 471 284), Takematsu (Abstract of JPO Publication 04095003), Idemitsu (A: Abstract of JP 7267804; B: abstract of JP 7267805),

First it is noted that applicants have stated on the record that the aminotriazinyl herbicides herein are known and that they have been described in the prior art (specification, p. 27).

Giencke et al, again, teach that aminotriazine herbicides may be combined with a large number of secondary herbicides (columns 18-20).

Hoechst, again, teaches also that aminotriazine herbicides may be combined with various other herbicides (p. 36-38).

Hirata et al (A) teach the synergistic combination of aminotriazine herbicides with urea herbicides.

Hirata et al (B) teach the synergistic combination of aminotriazine herbicides with benzoic acid or pyridine carboxylic acid herbicides.

Hirata et al © teach the synergistic combination of aminotriazine herbicides with thiocarbamate herbicides (formula II).

Hirata et al (D) teach the synergistic combination of aminotriazine herbicides with sulfonylurea herbicides.

Takematsu teaches the combination of aminotriazine herbicides with dinitroaniline herbicides for selective weed control.

Idemitsu (A) teaches the synergistic combination of aminotriazine herbicides with prodiamine, dithiopyr, halosulfuron, triclopyr, napropamid, bensulide, propyzamide, flazasulfuron, imazosulfuron, and imazaquin.

Idemitsu (B) teaches the synergistic combination of aminotriazine herbicides with pyrazosulfuron-ethyl, MCPP, pendimethalin, besulodine, and simazine.

One of ordinary skill in the art would be motivated to combine these references because they teach the herbicidal utility of aminotriazine compounds in combination with a variety of secondary herbicides.

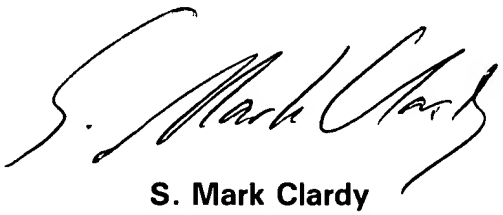
Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined applicants' aminotriazine herbicides with a second herbicidal agent, to make a synergistic herbicidal composition because a wide variety of such combinations has been shown by the cited prior art to result in synergistic compositions.. Further, it is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition that is to be used for the very same purpose; the

idea of combining them flows logically from their having been individually taught in the prior art. In re Kerkhoven, 205 USPQ 1069. Determination of appropriate concentration ranges would have been within the skill level of the ordinary artisan.

Applicants' data is sufficient to support a finding of nonobviousness for the elected species and for combinations wherein the A component is a herbicide of formula X, as in claim 3. The data, however, is incommensurate in scope with the remainder of the claims. Further, in view of the teachings concerning synergy, it would appear that merely demonstrating synergistic results, as taught in the prior art, would be insufficient for overcoming the rejection.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103c and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.



S. Mark Clardy
Primary Examiner
AU 1616

June 11, 2003